

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 9, 2008

JAMES CAMPBELL

v.

**GEORGE LITTLE, COMMISSIONER OF THE TENNESSEE DEPARTMENT OF
CORRECTION, RICKY BELL, WARDEN, AND
MIKE CRUTCHER, DEPUTY WARDEN**

**An Appeal from the Chancery Court for Davidson County
No. 07-1685-III Ellen Hobbs Lyle, Chancellor**

No. M2007-02762-COA-R3-CV - Filed May 14, 2009

This is a petition for common law writ of certiorari. The petitioner, a prisoner, was convicted of possession of drugs by the prison disciplinary board. He filed this petition for a writ of certiorari challenging his administrative conviction. The prisoner's petition, however, was not properly verified, and it did not state that it was the first application for the writ. On these bases, the respondents filed a motion to dismiss the petition. The petitioner filed a motion for leave to file an amended petition to cure the defects. The trial court denied the petitioner's motion to amend, because it was not filed within sixty days after the final decision of the lower tribunal. It granted the respondents' motion to dismiss. We affirm the trial court's denial of the petitioner's motion to amend and its dismissal of the initial petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is Affirmed

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J., W.S., and J. STEVEN STAFFORD, J., joined.

James Campbell, Nashville, Tennessee, appellant, *pro se*.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Kellena Baker, Assistant Attorney General, for the appellees, George Little, Commissioner of the Tennessee Department of Correction; Ricky Bell, Warden; and Mike Crutcher, Deputy Warden.

OPINION

Petitioner/Appellant James Campbell (“Campbell”) is an inmate in the custody of the Tennessee Department of Correction (“TDOC”), housed at the Riverbend Maximum Security Institution (“RMSI”) in Nashville, Tennessee. On May 29, 2007, Campbell was convicted of possession of illegal drugs by the RMSI disciplinary board. Campbell appealed this decision to Warden Ricky Bell, who denied the appeal, finding no error by the disciplinary board. Campbell then appealed to the Commissioner of the TDOC, George Little (“Commissioner Little”). Commissioner Little denied Campbell’s appeal on July 5, 2007.

On July 30, 2007, Campbell filed the instant petition for a common law writ of certiorari in the trial court below against Commissioner Little, Warden Ricky Bell, and Deputy Warden Mike Crutcher (collectively, “Respondents”). In the petition, Campbell sought review of the disciplinary proceedings in which he was convicted of possession of illegal drugs. He alleged that the defendants violated his due process rights, and that the disciplinary board acted illegally, fraudulently, and arbitrarily.

On September 5, 2007, Respondents filed a motion to dismiss Campbell’s petition, arguing that the trial court lacked subject matter jurisdiction over the petition because the petition was not verified and did not state that it was the first application for the writ. On September 25, 2007, Campbell filed a response in opposition to the motion to dismiss, claiming that he had filed an amended petition that purportedly cured the defects pointed out by the Respondents. On the same day, Campbell filed a motion for leave to file an amended petition.

On November 21, 2007, the trial court denied Campbell’s motion to amend because the amended petition was not filed within sixty (60) days of the final administrative decision. The trial court dismissed Campbell’s petition for lack of subject matter jurisdiction, because the petition was not verified and did not state it was the first application for the writ. From this order, Campbell now appeals.

On appeal, Campbell argues that the trial court erred in denying his motion to amend the petition and in dismissing his petition for lack of subject matter jurisdiction. The denial of a motion to amend will be reversed only upon a showing that the trial court abused its discretion. ***Hall v. Shelby County Retirement Board***, 922 S.W.2d 543, 546 (Tenn. Ct. App. 1995). Whether a trial court has subject matter jurisdiction is a question of law, which we review *de novo* with no presumption of correctness. ***Wilson v. TDOC***, No. W2005-00910-COA-R3-CV, 2006 WL 325933, at *2 (Tenn. Ct. App. Feb. 13, 2006).

Campbell argues that the trial court erred in denying his motion to amend the petition so as to cure the defects noted in the Respondents’ motion to dismiss. Tennessee Code Annotated § 27-9-102 requires a petition for a writ of certiorari to be filed within sixty days of the order or judgment of which the petitioner complains. Campbell’s appeal was denied by Commissioner Little on July

5, 2007. His amended petition was filed over sixty days later on September 25, 2007.¹ We find no error in the trial court's denial of Campbell's motion for leave to amend his petition.

Campbell argues that the trial court erred in finding that it lacked subject matter jurisdiction over his petition because it was not verified and because it failed to state that this was the first application for the writ. Tennessee Code Annotated § 27-8-104 provides:

(a) The judges of the inferior courts of law have the power, in all civil cases, to issue writs of certiorari to remove any cause or transcript thereof from any inferior jurisdiction, on sufficient cause, ***supported by oath or affirmation.***²

T.C.A. § 27-8-104(a) (2000) (emphasis added). Additionally, Tennessee Code Annotated § 27-8-106 provides:

The petition for certiorari may be ***sworn to*** before the clerk of the circuit court, the judge, any judge of the court of general sessions, or a notary public, ***and shall state that it is the first application for the writ.***

T.C.A. § 27-8-106 (2000) (emphasis added). Pursuant to these two statutes, this Court has held that a petition for a writ of certiorari that is not verified and does not state that it is the first application for the writ must be dismissed. *See Wilson*, 2006 WL 325933, at *4 (“In order for a petition for a common law writ of certiorari to be valid, the petitioner must verify the contents of the petition *and* swear to the contents of the petition under oath, typically by using a notary public.”); *Bowling v. Tenn. Bd. of Paroles*, No. M2001-00138-COA-R3-CV, 2002 WL 772695, at *3 (Tenn. Ct. App. Apr. 30, 2002) (indicating that the petition should have been dismissed because it was not verified, and because it did not state that it was the first application for the writ).

We have reviewed Campbell's petition, contained in the record in this cause. While the petition was notarized, it was not verified or sworn to under oath. To be properly verified, the petition must be “supported by oath or affirmation” and “sworn to” pursuant to Sections 27-8-104 and 106, quoted above. This is a significant requirement:

¹In addition, the amended petition proffered by Campbell failed to include language indicating that this was the first application for a writ. The amended petition states that “this is not my first application for writ of certiorari in which I filed one in 1998 against (TDOC).”

²This language tracks article VI, section 10 of the Tennessee Constitution, which states:

The Judges or Justices of the Inferior Courts of Law and Equity, shall have power in all civil cases, to issue writs of certiorari to remove any cause or the transcript of the record thereof, from any inferior jurisdiction, into such court of law, on sufficient cause, ***supported by oath or affirmation.***

TENN. CONST. art. VI, § 10 (emphasis added).

There is an important distinction between verifying a petition and notarizing a petition. Verification helps demonstrate the truth of the petitioner's allegations. Notarization, sometimes referred to as the acknowledgment, helps demonstrate the petitioner's proper execution. A petition for a common law writ of certiorari must not only be verified, but must also be sworn to under oath, typically through the use of a notary public. This sworn and notarized statement accompanying the petition must declare that the petition's allegations are true to the best of the petitioner's knowledge. . . .

It is well settled that the "sworn to" language found at T.C.A. § 27-8-106 requires that all petitions for writs of certiorari be verified by an affidavit; otherwise, neither the lower court, nor the appellate court would obtain jurisdiction over the petition. Courts have consistently held that the failure of the petitioner to verify the petition as required by the Tennessee Constitution and the Tennessee Code is proper grounds for dismissal.

Cason v. Little, No. W2007-01910-COA-R3-CV, 2008 WL 2065194, at *3-4 (Tenn. Ct. App. May 15, 2008) (citations and footnote omitted). Thus, Campbell's failure to verify his petition is grounds for dismissal.

Similarly, Campbell's initial petition did not state that it was the first application for a writ of certiorari. This is an independent basis for dismissal of the petition. *See* T.C.A. § 27-8-106. For these reasons, we find no error in the trial court's decision to dismiss the petition for lack of subject matter jurisdiction.

The decision of the trial court is affirmed. Costs on appeal are to be taxed to Appellant James Campbell, for which execution may issue, if necessary.

HOLLY M. KIRBY, JUDGE